



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG-2012-0967]

RIN 1625-AA01

Anchorage Regulations: Pacific Ocean at San Nicolas Island, Calif.; Restricted Anchorage Areas.

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule; request for comments.

SUMMARY: By this direct final rule, the Coast Guard is amending the restricted anchorage areas of San Nicolas Island, California. At the request of the United States Navy, the Coast Guard will remove the west area anchorage restriction and decrease the size of the east area anchorage restriction (see figure 1 located in the docket). After these amendments are finalized, the restricted anchorage at San Nicolas Island will accurately reflect the needs and operational use of the United States Navy.

DATES: This rule is effective [Insert date 90 days after publication in the FEDERAL REGISTER] unless an adverse comment, or notice of intent to submit an adverse comment, is either

submitted to our online docket via <http://www.regulations.gov> on or before [Insert date 60 days after publication in the FEDERAL REGISTER] or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by [Insert date 60 days after publication in the FEDERAL REGISTER], we will withdraw this direct final rule and publish a timely notice of withdrawal in the Federal Register.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

- (1) Federal eRulemaking Portal: <http://www.regulations.gov>
- (2) Fax: (202) 493-2251.
- (3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is (202) 366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Blake Morris,

Waterways Management Branch, U.S. Coast Guard; telephone (510) 437-3801, e-mail Blake.J.Morris@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that

you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number USCG-2012-0967 in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number USCG-2012-0967 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under ADDRESSES. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory Information

We are publishing this direct final rule under 33 CFR 1.05-55 because we do not expect an adverse comment. If no adverse comment or notice of intent to submit an adverse comment is received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], this rule will become effective as stated in the DATES section. In that case, approximately 30 days before the effective date, we will publish a document in the

Federal Register stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit an adverse comment, we will publish a document in the Federal Register announcing the withdrawal of all or part of this direct final rule. If an adverse comment applies only to part of this rule (e.g., to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered "adverse" if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

C. Basis and Purpose

The Coast Guard is conducting this rulemaking under the authority of 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1, and Department of Homeland Security Delegation No. 0170.1. This rule will amend 33 CFR 110.220(a) with

accurate regulatory information. The restricted anchorage areas listed do not reflect current enforcement practices or operational use by the U.S. Navy.

D. Discussion of the Rule

Restricted anchorages were established at the east and west ends of San Nicolas Island to prevent vessels from interrupting naval operations. The restricted anchorages, in current configuration, do not match operational requirements. The east-end area was designed to prevent vessels from disturbing barge offloading and fuel transfer lines in the vicinity. Under its current configuration, the east-end area does not prevent vessels from disturbing the fuel-offloading lines at the mooring buoys offshore Coast Guard Beach. It also does not prevent vessels from disturbing barge offloads. Regular barge offloading now occurs exclusively at the new pier facility, on the west edge of the restricted anchorage at Daytona Beach.

The west-end area was designed to keep vessels out of danger zones from missile launch or hazard patterns. However, restricted areas are currently established around the island, which restrict vessels from entering these danger zones during operations. The Navy can still open and close these areas in part or in whole based on operational needs, making a restricted anchorage area redundant.

Both commercial and recreational vessels take part in fishing around the island. Commercial fishing is common within section Alpha on the northern side of the restricted area around the island. Most fishing at and around the island by both recreational boaters and Navy personnel occurs in section Alpha, outside of either restricted anchorage area.

This rule will remove the western restricted anchorage area, which covered approximately 20 square nautical miles (NM). The rule will update the eastern restricted anchorage area to reflect operational use, decreasing its size from approximately 2.5 square NM to 1.3 square NM. The new restricted anchorage will include a single eastern no-anchorage zone that encompasses both the mooring buoys offshore Coast Guard Beach and the explosives safety arc around the Barge Pier at Daytona Beach (see figure 2 located in the docket). It will restrict vessels from entering these areas in order to prevent interferences with fuel, cargo or explosives-offloads in these areas.

This rule also updates and identifies the agencies and officials responsible for granting access to and enforcing the restricted anchorage area. The Commanding Officer of Naval Base Ventura County may grant permission to enter the area. Vessels in the restricted anchorage area must obey the orders of the Commanding Officer, Naval Base Ventura County; Coast Guard Eleventh District Commander; or Coast Guard Captain of the Port,

Los Angeles-Long Beach, when issued to carry out the purpose of the restricted anchorage.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule simply amends the size and location of the restricted anchorage areas off of San Nicolas Island to accurately reflect the needs and operational use of the United States Navy.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small

businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which might be small entities: the owners or operators of commercial or recreational vessels intending to anchor in the affected area.

The impact to these entities will not be significant since this rule will decrease the size of the eastern restricted anchorage area off San Nicolas Island, and eliminate the western area entirely. These changes will result in a net decrease in the size of the restricted anchorage area of approximately 21 square NM, allowing for more access to anchorage grounds by both commercial and recreational vessels.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect

on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the adjustment of restricted anchorage areas for Naval operations in the waters off San Nicolas Island. This rule is categorically excluded from further review under paragraph (34)(f) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 110

Anchorage Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110 - ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 110.220 to read as follows:

§ 110.220 Pacific Ocean at San Nicolas Island, Calif; restricted anchorage areas.

(a) *The restricted area.* All waters within one-quarter nautical mile from the shoreline or manmade structures including mooring buoys, piers and jetties on the easterly end of San Nicolas Island between a point on the northeast shore at latitude 33°14'32" N, longitude 119°26'41" W and a point on the southeast shore at latitude 33°13'08" N, longitude 119°27'06" W.

(b) *The regulations.* (1) Except in an emergency, no vessel shall enter into or anchor in this restricted area without permission from the Commanding Officer, Naval Base Ventura County. Cargo and supply vessels or barges destined for San Nicolas Island may anchor in the area for unloading or loading. (2) Each person in a restricted anchorage shall obey the order

or direction of the Commanding Officer, Naval Base Ventura County, Coast Guard Eleventh District Commander, or Coast Guard Captain of the Port, Los Angeles-Long Beach, when issued to carry out this section.

(c) *Enforcement.* The Coast Guard may be assisted in enforcing this rule by other Federal, state, or local agencies.

Dated: September 10, 2013

K. L. Schultz
Rear Admiral, U.S. Coast Guard
Commander, Eleventh Coast Guard District

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